IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

OSA No.21 of 1999.

Judgment reserved on:28.2.2007.

Date of decision: 14th March, 2007.

National Insurance Co. Ltd. and another .....Appellants

-Versus-

M/s.Lehnu Mal Ram Krishan and others ....Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.
The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? Yes

For the Appellants: Mr.Ashwani Kumar Sharma, Advocate.

For respondents: Mr.Ajay Kumar, Advocate.

Deepak Gupta, J

This original side appeal under Section 10 of the Delhi High Court Act, 1966 (as applicable to the State of Himachal Pradesh) read with Section 96 of the Code of Civil Procedure is directed against the judgment and decree of learned single Judge of this Court in Civil Suit No.8 of 1998 decided on 6.4.1999 decreeing the suit of the respondents for a sum of Rs.12,82,502/- alongwith interest and costs.

The facts necessary for disposal of the case are that the respondent No.1 (Plaintiff No.1 in the suit) M/s.Lehnu Mal Ram Krishan is a partnership firm. The other respondents (plaintiffs) are the partners or heirs of the partners of the said firm. The plaintiffs were carrying on the business of forest lessees. In April, 1984 the plaintiffs through their bankers M/s.Grindlays Bank, the Mall Shimla got some of their timber stocks, stacked near Chaura in District Kinnaur, insured with the appellant Insurance Company for a sum of Rs.23,50,000/-. According to the plaintiffs on

12.1.1985 due to an accidental fire out of the insured timber, stocks of timber worth about Rs.12 lakhs stacked near the National High Way No.22 near Chaura were destroyed. The Appellant Insurance Company was informed about the loss through its Branch Office at Shimla. The appellant appointed and deputed M/s.K.D.Kohli and Company, surveyors to assess the loss. The Surveyor Company sent its representatives to the site on 17.1.1985 and against the claim of Rs.11,03,000/- made by the plaintiffs, the surveyor assessed the loss at Rs.9,56,839/- vide their report Ext.PW-1/A. It appears that the appellants Insurance Company was not satisfied with the surveyors report and again asked the surveyor to re-assess the loss and directed that this time Sh.K.D.Kohli should himself assess the loss. Sh.K.D. Kohli again assessed the loss and vide his report dated 6.7.1985 Ext.PW-1/B came to the same conclusion as before.

It would be pertinent to mention that the claim of the plaintiffs was recommended both by the Branch Manager as well as by the Divisional Manager to the competent authority i.e. the Regional Manager. Both these authorities were of the considered opinion that the claim as assessed by the surveyors be paid to the plaintiffs. The Regional Manager who is defendant No.2 in the suit and is appellant No.2 herein did not accept the recommendations of the Branch Manager and Divisional Manager. He instead asked one M/s.Integrated Security Corporation of India to investigate the claim. This investigation was not a statutory investigation. It was only an investigation made by the Insurance Company and the Investigator made a report against the plaintiffs and the conclusion of the Investigator is that in all probability the plaintiffs themselves had asked their employer to set fire to the timber. Thereafter, the claim was sent to the higher authorities and was repudiated. This led to the filing of the suit.

The suit was contested by the defendants. Issues were framed and parties led evidence and after trial the learned single Judge has passed a

decree for Rs.12,82,502/- i.e. Rs.9,57,091/- being the amount assessed by the surveyor and Rs.3,25,411/- being interest @ 12% from 4.3.1985 the date of survey report till date of filing of the suit and also awarded proportionate costs and future interest @ 12% p.a. in favour of the plaintiffs and against the defendants. The defendants being aggrieved have filed the present appeal.

We have heard learned counsel for the parties and have also gone through the record of the case. There is no dispute between the parties that some timber was destroyed in the fire. According to the plaintiffs it was an accidental fire whereas in appeal it is alleged that the fire was set up at the instance of the plaintiffs and the claim is fraudulent. At the outset it would be pertinent to mention that in the written statement filed by the Insurance Company there is no ground raised that the fire was set up at the instance of the plaintiffs. The stock in question was insured vide insurance policy Ext.PW-8/D. There is no dispute that it covered loss due to the fire. Condition No.13 of the Insurance Policy is an exclusion clause and according to this clause if the claim of the insured is fraudulent the Insurance Company shall not be liable. This clause also provides that in case loss or damage is occasioned by the willful act or with the consent or connivance of the insured all benefits under the policy would be forfeited. It was for the Insurance Company to set up a plea in terms of the aforesaid clause. No such defence was raised. Therefore, at the stage of appeal the Insurance Company cannot be permitted to argue that the fire was caused at the instance of the insured.

As already stated above there is no dispute that the timber was lost in a fire. Immediately after the loss was caused the matter was reported to the Insurance Company. The Insurance Company appointed a surveyor to look into the matter. The Surveyor M/s. K.D. Kohli and Company initially submitted its detailed report which is Ext.PW-1/A. This report has been proved by Sh.K.D. Kohli appearing as PW-1. He has totally supported the

claim of the plaintiffs. It would be pertinent to reproduce paras 5 and 15 of the report as under:

> "5.BREACH OF WARRANTTES & POLICY CONDITIONS:
>
> The policy is subject to warranties 2 to 7 & 14 of form FW 1 and we confirm that none of these warranties appear to have been breached. As the policy covers loss due to jungle fire by special provision by way of paying additional premium, this contingency is also covered. By paying additional premium the insured had covered their stocks which are stored at various locations at the mentioned areas of jungle to NH 22. During our inspection we did not observe any breach of policy conditions or warranties specially mentioned in the policy or the general warranties and conditions of the standard fire policy.
>
> 15.CAUSE OF FIRE:
>
> The proximate cause of the present loss can be attributed to jungle fire. There are 3 types of forest fires, viz., surface fire, ground fire and crown fire. In surface fire the fire merely runs in the leaves and ground litter. In ground fire, the fire covers the underwood and dense bushes. Crown fire is usually caused when the ground or surface fire reaches the top of ridge or knoll and the enhanced draft carries the flame to the trunks of the trees and to the top of the crowns. The present fire can be classified as a ground fire and as the pipe trees are not highly resinous during this season, the fire did not spread on the trees and become a crown fire. During this season, due to the severe cold the entire bushes are dry and added to that in such forest there is a carpet of dry pine needles. The spread of fire is aggravated by the pine cones which are rich in resins. Once they catch fire, they get dislodged and roll on the hill sides and help in the spread of fire. The jungle fire may have started due to one of the following reasons:-
>
> i) some shepherds herding sheep might have started a fire to keep themselves warm in the lower ranges and carelessly started a fire.
>
> ii) As this range is full of loose bounders some bounder might have got dislodged and while rolling down (due to friction) might have started a fire."

It is clear from the reading of the aforesaid portions of the surveyor's report that according to the surveyor the fire was an accidental fire. The surveyor in its first report had reconstructed and calculated the quantity and value of the stocks before the fire both from the records of the Forest Department, the plaintiffs and their bankers. Timber is a commodity which cannot be transported or exported without permit. It is subject to strict governmental controls. After taking into consideration all these documents the surveyor came to the conclusion that there was no under insurance and also came to the conclusion that the loss caused to the insured was to the extent of Rs.9,56,839/-.

According to the Insurance Company it was not satisfied with the report of the Surveyor and asked Sh.K.D.Kohli to himself visit the spot and submit fresh report. PW-1 K.D. Kohli at the instance of the Insurance Company again went to the spot. As many as 11 queries had been raised and after again making in-depth analysis he answered each and every query and reiterated his previous report.

Still not satisfied the Regional Manager asked M/s.Integrated Services to go into the matter and M/s.Integrated Services submitted their report which is Ext.DW-5/A. It would be pertinent to mention that this report was signed by one Sh.D.C.Sharma. When Sh.D.C.Sharma appeared in the witness box he clearly admitted that he had investigated the case with the help of another retired police official. In cross examination he states that he is neither a surveyor nor a loss assessor. According to him the persons on the basis of whose statements the report was made were examined by one Sh.Salman, retired Inspector of Police. He further states that except for some people at Yamuna Nagar he had not contacted any of the other persons personally. He admits that he never asked the plaintiffs

to produce their account books. The report submitted by Sh.D.C.Sharma is not worth the paper it is written on. It is apparent that he has not personally carried out any investigation in the case. None of the persons on whose statements reliance has been placed in the report have been examined by him. The report submitted by him also does not inspire any confidence. His reasoning is devoid of any merit. His report is totally based on conjectures and surmises and no reliance can be placed on the same. His conclusion that the fire was caused by Chowkidar employed by the insured under the instructions of the insured is based on no material and is only a presumption drawn by him. It is obvious that the Regional Manager of the Insurance Company has obtained a self-serving report from DW-5 which is totally baseless. This was done only to defeat the legitimate claim of the plaintiffs.

It would be pertinent to refer to Ext.PX-19 which is the recommendation made by the Branch Manager of the Company after going through the reports of the Surveyors as well as the Investigator referred to above:

> "Thus from the above as well as from other portions of the Investigation Report, it is clear that he has not been able to substantiate any of the allegations and has contradicted himself on various points. He has not contacted any legally constituted authority or Government Deptt., such as, Police, Forest Deptt. Border Roads Organisation, HRTC etc. but has spent enormous amount of time effort and money in travelling to places like Kullu and Garhwal without establishing anything concrete. One alternative now is since we have not been able to establish any violation on behalf of the insured we should give them the benefit of doubt and settle the claim as per the surveyors recommendations. Alternatively, we can appoint an officer of the company to investigate further and tie up all loose ends. However, keeping our reputation in the market in mind it

is recommended that since already two years have elapsed since the fire and we do not have any evidence that will stand up in a court of law, we should pay the claim in full amounting to Rs.9,57,091/-."

The Branch Manager after going through the entire facts and circumstances clearly came to the conclusion that the claim of the insured as assessed by the surveyor should be paid to them. The matter did not end here. The Divisional Manager of the appellant Company made the following recommendations vide his note dated 28.1.1987:

"In view of the above, it appears that there are two alternatives left for the company and these are:

(1)Either an official investigation be carried out in the case;

(2)or the claim be settled for Rs.9,57,091/-

In case it is decided by the company to hold an official investigation then the same has to be held immediately. However, in view of the time that has elapsed it is very doubtful as to whether a proper investigation can be carried out now.

On the basis of the papers already available with us, we feel that the company cannot repudiate the claim and on this basis we would recommend that the claim be settled for Rs.9,57,091/-."

According to DW-2 Sh.K.S. Kumar, the claim was repudiated by the Head Office. There is nothing on record of the case to show that what were the reasons for repudiating the claim and differing with the opinions of the Branch Manager and the Divisional Manager? The letter of repudiation Ext.PX does not give any reasons. According to DW-2 he had not repudiated the claim. Why did the appellant Insurance Company not place before the Court the reasons for repudiating the claim? Both the Branch Manager as well as the Divisional Manager had in their recommendations clearly stated that in case the Company decides not to pay the claim to the insured then an

official investigation should be held. Admittedly no such official investigation has been held. There is no reason given by the Insurance Company to explain why such official investigation was not carried out. In the absence of any official investigation and in view of the inherent contradictions in the report of M/s.Integrated Services, in our considered view, the Insurance Company could not have rejected the claim of the insured.

In view of the evidence led by the parties and the material placed on record it is clear that the plaintiffs proved that they lost timber in a fire. The defendants have failed to show that the plaintiffs were in any way responsible for causing the fire. Therefore, the plaintiffs are entitled to recover the loss suffered by them from the Insurance Company in terms of the policy of insurance.

As far as the quantum of loss is concerned, the surveyor has assessed the loss at Rs.9,56,839/-. The surveyor is not an employee of the Insurance Company. The assessment of the surveyor is based on the accounts and records of the Forest Department, the plaintiffs and their bankers. The plaintiffs even during the course of evidence have led evidence to prove the quantity and value of timber lost in the fire. The learned single Judge, in our opinion, has rightly come to the conclusion that the plaintiffs have proved the loss to the extent of Rs.9,56,839/-.

Before parting with the case we must observe with dismay that the Insurance Company has not at all acted fairly in this case. Once the Branch Manager as well as the Divisional Manager had specifically proposed that the claim of the insured should be paid the Insurance Company should not have rejected the claim of the insured without giving specific reasons. Why did the higher authorities not agree with the proposal made by the officers below especially when

they had given reasoned recommendations, is not known? It appears that the entire exercise was only to defeat the legitimate claim of the plaintiffs. Even after the learned single Judge of this Court had come to the conclusion that the defence taken up by the Insurance Company was devoid of any merit, they still chose to file the appeal. The appellants Insurance Company is a public body and is accountable to the public. It cannot waste the time and money on frivolous and vexatious litigation.

In view of the above discussion, the present appeal is dismissed with costs. The lawyer fee is assessed at Rs.15,000/-. The appellants are also burdened with exemplary costs of Rs.10,000/- for having dragged the plaintiffs into unnecessary litigation.

(Deepak Gupta),
Judge

March 14, 2007. **(Surinder Singh)**
PV **Judge**